

Impact Analysis-Proposed Permanent Rule Change

Agency: NC Department of Health and Human Services (DHHS)
Division of Social Services (DSS)
Child Welfare Section

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Rule Citation & Chapter Name: **10A NCAC 70L Waiver Procedures, Denial, Suspension, Revocations and Appeal Procedures
70L .0301 Appeal Procedures**

Statutory Authority: G.S. 7B-505.1; 131D-10.5; 143B-153;

Summary of Impact:

State Impact:	Yes
Local Impact:	Minimal
Private Sector:	Yes
Substantial Economic Impact:	No

I. Overview

Item (10) of Section 471 of the Social Security Act {42 U.S.C. 671} directs states to provide specific rules and policies based on national standards for foster care and child caring institutions.

II. Summary and Rationale for

Proposed Rule

10A NCAC 70L .0301(a) proposed rule amendment is to give notice to licensed child-care agencies of their right to due process procedures for amendment to provisional status licensure actions. 10A NCAC 70L .0201 allows for the issuance of an amendment (provisional) license when the agency has failed to comply with licensure requirements. However, 10A NCAC 70L .0301 does not include notice of due process for amended licenses. Amendment to provisional status license are required to be posted and parents, guardian and custodians must receive notice of the amendment license.

According to Social Security Act-Section 471 (a)(10) an amendment to provisional status license is considered not a full license as required by the Title IV-E Foster Care Maintenance Payment Program. Therefore the issuance of an amendment to provisional status would make placements in those agencies ineligible to claim IV-E funds during the provisional status license. The purpose of requiring full licensure or approval of placement providers is to assure that the State's licensure or approval standards,

including those that protect the health and safety of children, are applied to all licensed agencies that care for children.

III. Analysis of Fiscal Impact

The impact of the notice of appeal rights on the issuance of a provisional license has no precedent at this time, however the issuance of a provisional license with appeal rights does impact NCDSS staff and Attorney General Child Welfare Attorneys. NCDSS expects this rule to have a fiscal impact because the appeal rights were not previously stated in rule, and these agencies were not previously notified of their appeal rights. The rule change and the associated notification will increase awareness of appeal rights among the regulated community. Therefore, NCDSS expects that the rule change will result in new appeals.

In the past 5 years there have been 9 actions taken by the NCDSS Regulatory and Licensing staff to amend a license to provisional status. It is estimated that the cost of NCDSS Regulatory and Licensing staff to initiate an action to amend a license to provisional is approximately \$1008 (36hrsx\$28). NCDSS Regulatory and Licensing staff costs to be involved in an appeal of the amendment is estimated at \$1026 (37hrsx\$28).¹

The Assistant Attorney General, Child Welfare Attorney estimates the time that they would spend on an appeal of an amendment of an agency license to provisional status would be an average of 100 hours per appeal. The Attorney further estimates that there would be an average of one such appeal per year. Based on the average annual total compensation for attorneys employed by the state, the estimated average cost of the appeal is \$6600. The total average of the attorney's annual compensation was determined using the NCOSHR classification and compensation information and NCOSHR total compensation calculator.²

The General Counsel of the Office of Administrative Hearings is of the opinions that the license holder whose license is amended to provisional status by DHHS currently has the right to file a contested case with the Office of Administrative Hearings under Chapter 150B of the General Statutes to contest that action. Therefore, the proposed rule amendment amounts to a technical correction and does not create any new administrative proceeding that would result in any increased fiscal impact on the operations of the Office of Administrative Hearings.

Only four local Departments of Social Services hold a license to which this rule revision would apply. As license amendments to provisional status and appeals of that licensure action are expected to be very infrequent among these four departments, this analysis assumes that the proposed rule will have minimal local government impact.

The appeal process for provisional licenses will be the same as for revocation actions as outlined in G.S. 150B; upon receipt of notice of an administrative action, the recipient has sixty (60) days to appeal the decision. A proper appeal suspends the adverse decision until the appeal is resolved. An appeal is made by requesting a contested case hearing before an Administrative Law Judge. A hearing is requested by

¹ Source: Consultation with NCDSS staff. Hourly compensation rate includes salary and benefits.

² North Carolina Office of State Human Resources, July 1 2014 Salary Plan Book, accessed at http://s3.amazonaws.com/oshr.ncgovstaging.fayze2.com/s3fs-public/migrated_files/Guide/CompWebSite/2014%20Salary%20Plan%20Book.pdf
North Carolina Office of State Human Resources, Total Compensation Calculator, accessed at <http://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>

filing a Petition for a Contested Case Hearing with the Office of Administrative Hearings. A petition is filed by mailing the original and one copy of the petition to the Office of Administrative Hearings. The petition must be accompanied by a twenty dollar (\$20) filing fee.

The petition form may be obtained by writing to or calling the Clerk of the Office of Administrative Hearings, or by downloading Form H-06 at the Office of Administrative Hearing website. The petition must also include a Certificate of Service showing service on the Department of Health and Human Services. The petition form referred to above includes a Certificate of Service section. A copy of the petition must be served on the Department of Health and Human Services by mail.

A hearing on the Petition for Contested Case Hearing is subsequently held in accordance with the Administrative Procedures Act found in North Carolina General Statutes Chapter 150B. The petitioner may be represented by counsel if desired. Following the hearing, the Administrative Law judge issues a final decision containing findings of facts and conclusions of law.

This analysis assumes that the petitioner's appeal costs would be similar to the costs incurred by the state. Petitioners' costs may vary based on the decision to be represented by counsel.

Benefits

The rule revision would notify the licensed agency of the right to appeal the decision to amend the license to provisional status and to be in line with notification of the right to appeal all other forms of negative licensure actions. There could be a benefit to a licensed agency with the added right to appeal the decision to amend the agency's license to provisional as while the appeal is in process. A proper appeal suspends the adverse decision until the appeal is resolved; therefore, the agency would continue to receive IV-E funding for eligible clients in their care during the appeal process. The fiscal benefit would vary from agency to agency depending on the number of IV-E eligible clients for whom they are providing care during the time of the appeal process.

Summary

Based on NCDSS licensure action records and the Assistant Attorney General Child Welfare Attorney's opinion, this analysis assumes that one appeal of a license amendment to provisional status will occur each year.

The estimated total cost to the state of an appeal of a licensure amendment to provisional status is \$8,634. This analysis assumes that petitioning licensed agency's costs would be similar to the state's costs, plus the \$20 petition filing fee. Petitioner costs may vary depending upon the decision to be represented by counsel.

Licensed agencies will benefit from increased awareness of their appeal rights and avoidance of IV-E funding losses during the appeal process.

Appendix

10A NCAC 70L .0301 is proposed for amendment as follows:

10A NCAC 70L .0301 APPEAL PROCEDURES

- (a) Within 60 days of the decision to deny, ~~amend~~, amend to provisional status, suspend or revoke a license the applicant or license holder may petition for a determination of his/her legal rights, privileges or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the licensing authority.
- (b) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4 , the petition shall be served on a registered agent for service of process for the licensing authority. A list of registered agents may be obtained from the Office of Legal Affairs.
- (c) Procedures for the processing of an appeal of an adverse licensing action and for the final decision are specified in G.S. 150B, Article 3 and 10A NCAC 1A.

Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 150B-22; 150B-23.